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BLUESTAR COMMUNICATIONS, INC.

April 18, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. Lawrence Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C312
Washington, DC 20554

Re: Collocation Practices Pending
Remand Proceedings
CC Docket 98-147

Dear Mr. Strickling,

The DSL Access Telecommunications Alliance ("DATA") requests that the Commission act expeditiously to implement regulatory measures that will assure that DSL and other competitive telecommunications service providers will be assured of reasonable terms and conditions for collocation pending proceedings on remand from the United States Court of Appeals for the District of Columbia Circuit.¹

Even in the short period since the D.C. Circuit issued its decision, ILECs are boldly putting CLECs and regulators on notice that they intend to unilaterally impose on the industry their view of their collocation obligations under the Act. Bell Atlantic has recently filed collocation tariffs in Massachusetts subject to the reservation that it intends to revise its tariffs consistent with its view of the D.C. Circuit's decision.² SNET recently filed amended collocation tariffs in Connecticut that unilaterally implement its interpretation of the *Collocation Remand Order*.³ And, USWest is already attempting to invalidate state collocation rules based

¹ *GTE Service Corporation v. FCC*, Case No. 99-1176 (D.C. Circuit March 17, 2000) ("Collocation Remand Order")

² Letter From Barbara Anne Sousa of Bell Atlantic to Mary L. Cottrell, Secretary, Department of Telecommunications & Energy dated March 23, 2000, attached as Exhibit A.

³ Southern New England Telephone, Revised Collocation Tariff, Docket No. 99-08-05, filed March 29, 2000.

on the *Collocation Remand Order*.⁴

While the Commission should act to protect all competitive carriers, DATA is concerned that DSL and other advanced services providers are likely to be in the front lines of any ILEC efforts to turn back the clock on collocation. DSL is likely to be a cornerstone of competitive telecommunications service providers success in entering local markets. Accordingly, ILECs have strong incentives to discourage the rapid deployment of competitive DSL services. In particular, DATA is concerned that ILECs will attempt to unreasonably restrict the types of equipment that DSL providers may collocate pending remand proceedings. DATA stresses in the strongest possible terms that it would be totally unreasonable for ILECs to seek to impose on competitive carriers their view of where the collocation rules should end up well before the Commission has acted on remand. The Commission should not permit ILECs, pending remand, to arrogate to themselves the authority to set the ground rules for collocation.

As an obvious first step to addressing these concerns, the Commission should establish an expedited schedule for resolution of the issues that will be addressed in the *Collocation Remand Order*. This will assure that any regulatory uncertainty pending remand proceedings is minimized.

In addition, the Commission should proceed with steps to strengthen existing collocation rules in ways that are not within the scope of collocation issues on remand. The Commission should promptly issue a decision on reconsideration of the *Collocation Order* that establishes mandatory intervals for provision by ILECs of cageless collocation. As pointed out by BlueStar Communications, Inc. and others in this proceeding, establishment of collocation intervals is a very important step that the Commission could take to promote the rapid deployment of advanced services.⁵ The *Collocation Remand Order* specifically affirmed the Commission's determination that ILECs must provide cageless collocation.⁶ Adoption of intervals for cageless collocation on reconsideration of the *Collocation Order* would not transgress or prejudge issues on remand. Accordingly, the Commission should promptly establish collocation installation intervals regardless of consideration of separate issues on remand from the DC Circuit.

The Commission should additionally implement the recent suggestion by the Association of Local Telecommunications Services ("ALTS") that the Commission establish a rapid response system to minimize the number and severity of collocation disputes pending remand proceedings similar to the effort undertaken after the Supreme Court vacated the Commission's rules

⁴ *MCI Telecommunications Corp., and MCIMetro Access Transmission Services, Inc. v. US West Communications, Inc.*, Case Nos. 98-35819, 98-35820, 98-35822, Petition for Rehearing, US West Communications, Inc., filed March 23, 2000.

⁵ Letters from BlueStar Communications, Inc. to Magalie Roman Salas, CC Docket No. 98-147, dated November 19, 2000 and February 5, 2000.

⁶ *Collocation Remand Order*, Slip Op. p. 8.

concerning access to unbundled network elements.⁷ The Commission should undertake to obtain written commitments from ILECs that they will make collocation arrangements available as required under current rules pending proceedings on remand. Given that ILECs, as discussed, are already preparing to establish their own *de facto* collocation rules before the Commission has acted on remand, this will assure that CLECs' plans for provision of advanced telecommunications services are not disrupted by precipitous changes in ILEC collocation practices.

Apart from these measures, and to the extent that ILECs are unwilling informally to commit to complying with current collocation rules pending remand proceedings, the Commission should enter an interim, emergency order preserving CLECs' ability to obtain reasonable collocation arrangements pending remand. An interim order should provide first that CLECs may continue all current in-place collocation arrangements pending remand. Further, the interim order should provide that ILECs must comply with current collocation rules. This will assure that CLECs' business plans are not truncated by ILECs' self-help efforts to reinterpret collocation rules pending remand proceedings. Such an interim, emergency order is well within the Commission's authority. The Commission has previously acted on an interim or emergency basis to establish and clarify regulatory requirements after a remand.⁸

In conclusion, pending resolution of issues on remand, DATA requests that the Commission:

- (1) establish an expedited schedule for resolution of the issues that will be addressed in the *Collocation Remand Order*;

⁷ See *Public Notice*, Common Carrier Bureau Establishes Rapid-Response System to Minimize Disputes Arising From Supreme Court's Iowa Utilities Board Order," DA 99-532 (rel. March 17, 1999).


⁸ See *Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, 5 FCC Rcd. 4714 (Com. Car. Bur. 1990) (permitting BOCs to operate pursuant to nonstructural safeguards following vacation of *Computer III* rules in *California v. FCC*, 0905 F. 2d 1217 (9th Cir. 1990); *Responsible Accounting Officers Letter 14, Classification of Inside Wiring Services for Accounting Purposes*, 4 FCC Rcd 7110 (Com. Car. Bureau 1989) (RAO Letter 14 (directing carriers to continue to classify inside wiring services as nonregulated for accounting purposes pending resolution of proceedings on remand from *NARUC v. FCC*, 880 F. 2d 422 (DC Cir. 1989)).

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- (2) promptly issue an order resolving issues, such as collocation installation intervals, on reconsideration of the *Collocation Order* that are outside the scope of remand issues;
- (3) adopt ALTS' proposal for implementation of a collocation rapid response system to minimize the disputes that may arise between carriers pending a decision on remand; and
- (4) to the extent necessary, enter an interim order preserving CLECs' ability to obtain current collocation arrangements pending remand proceedings.

Sincerely,



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